

BEFORE THE
BOARD OF ACCOUNTANCY
STATE OF CALIFORNIA

In the Matter of the Petition for Reinstatement
of Revoked Certificate of:

SCOTT KENDALL BARTON,

Petitioner.

No. SI-2006-015

OAH No. N2006030767

DECISION

On May 19, 2006, in San Jose, California, this matter was heard by the State of California Board of Accountancy. Board members present and participating in the hearing were Ronald Blanc, Esq., President; David L. Swartz, CPA, Vice President; Ruben A. Davila, CPA, Esq., Secretary and Treasurer; Richard S. Charney, D.C.; Angela Chi, CPA; Donald A. Driftmier, CPA; Thomas Iino, CPA; Clifton Johnson; Bill MacAloney; Marcus McDaniel, Esq.; Robert Petersen, CPA; Renata Sos, Esq.; and Stuart T. Waldman. M. Amanda Behe, Administrative Law Judge, State of California, Office of Administrative Hearings, presided.

Petitioner Scott Kendall Barton represented himself.

Michael R. Granen, Deputy Attorney General, appeared pursuant to Government Code section 11522.

This matter was submitted on May 19, 2006.

FACTUAL FINDINGS

1. On May 8, 1981, the Board of Accountancy issued Certified Public Accountant certificate No. 31817 to petitioner Scott Kendall Barton.

2. On June 21, 2003, in Case No. AC-2002-4, petitioner and the Board entered into a Stipulated Settlement and Disciplinary Order in which petitioner admitted that his right to practice before the United States Securities and Exchange Commission had been suspended or revoked on July 2, 2001, in an administrative proceeding before the SEC entitled "In the Matter of Scott K. Barton, CPA, SEC Proceeding No. 3-10528," and he was denied the privilege of appearing or practicing before the SEC for his conduct as the controller of Paracelsus Healthcare Corporation. In the Stipulated Settlement petitioner

agreed that his certificate was subject to discipline pursuant to Business and Professions Code section 5100, subdivision (g), and to revocation of his license. He further agreed that if he should seek reinstatement he would reimburse the Board's costs of \$6,500, prior to the consideration of such a petition.

The Texas Board of Public Accountancy revoked petitioner's public accountancy certificate in that state on the basis of the discipline imposed by the SEC. Petitioner lived in Texas until May 2005, when he returned to California.

3. On February 6, 2006, petitioner filed a petition for reinstatement of his CPA certificate. In that document petitioner wrote that he hopes to secure a position as a CFO or Controller for a company in private industry, and does not expect to work in a CPA practice or firm.

From December 1997 to April 2004 petitioner was the CFO of IMED Group, a physician practice management company serving primarily anesthesiologists and registered nurses. In that position he supervised seven employees, including two CPAs, and interacted directly with the outside CPA firm, Mann Frankfort Stein & Lipp, which conducted the annual audit and prepared tax returns. From April 2004 to the date of submission of his petition he has been the CEO of NASCO, a management consulting firm in Corona, California.

Since the revocation of his license petitioner has completed 148.5 hours of continuing education, with an emphasis on reporting requirements of public companies. He described in his petition that he has worked diligently to improve his technical and professional skills and correct the weaknesses that led to the SEC Order.

The petition was accompanied by ten letters of reference from individuals who know petitioner personally and professionally, and support the reinstatement of his certificate. Ron Booker, CPA, who was petitioner's immediate supervisor for over six years at IMED, wrote that petitioner conducts himself in a professional manner and was respected by his peers and the firm's clients. Gregg Steffen, CPA, a partner with Mann Frankfort Stein & Lipp, wrote that petitioner was ethical and professional, and has the requisite knowledge, technical ability and integrity required of a CPA. Petitioner has donated his time to an effort to establish a clinical research organization. Nathan Schwartz wrote that petitioner has spent countless hours of his personal time to the effort to bring access to cancer drugs to emerging countries.

Petitioner reimbursed the Board's costs of \$6,500, representing the cost of investigation and prosecution of Case No. AC-2002-4.

4. On March 18, 2006, petitioner submitted evidence of his payment of the civil penalty assessed in the civil action in the U.S. District Court for the Southern District of Texas, Houston Division, Case No. CIV H-01-2022, captioned "SEC v. Ron Messenger, et al."

5. On November 10, 2005, the Texas Board of Public Accountancy issued its Order granting reinstatement of petitioner's public accountancy certificate in that state.

6. On February 17, 2006, the Securities and Exchange Commission issued its "Order Granting Application for Reinstatement to Appear and Practice Before the Commission as an Accountant Responsible for the Preparation or Review of Financial Statements Required to be Filed with the Commission" with regard to petitioner's CPA credential.

7. In April 2006 petitioner was hired as a Controller of the Pharmacy Division of Kaiser Permanente. Petitioner testified that at age 54 he hopes to remain in that position, which requires licensure. That condition is satisfied by the reinstatement of his Texas license, but for professional and personal reasons he hopes for reinstatement of his California license as well.

8. Petitioner took responsibility for his actions and persuasively testified that he would never do anything unethical in his practice again. In addition to the impact on his licenses, petitioner's errors have had an impact on his family, income, and professional standing. If he were ever faced with pressure to misrepresent facts petitioner would report to the proper authorities and resign his position.

Both the SEC and the Texas Board of Accountancy have scrutinized petitioner's activities and determined he is rehabilitated. His testimony displayed sincere remorse, and his substantial continuing education more than satisfies the requirements for attest work and license renewal.

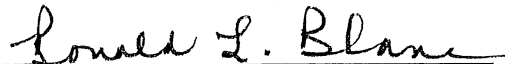
LEGAL CONCLUSIONS

Petitioner established by clear and convincing evidence that he is rehabilitated and is competent to practice as a certified public accountant.

ORDER

The petition of Scott Kendall Barton for reinstatement of Certified Public Accountant certificate No. 31817 is granted.

DATED: June 20, 2006


RONALD BLANC, ESQ., PRESIDENT
Board of Accountancy
State of California

1 BILL LOCKYER, Attorney General
of the State of California
2 JEANNE C. WERNER, State Bar No. 93170
Deputy Attorney General
3 California Department of Justice
1515 Clay Street, 21st Floor
4 P.O. Box 70550
Oakland, CA 94612-0550
5 Telephone: (510) 622-2226
Facsimile: (510) 622-2121
6
7 Attorneys for Complainant

8 **BEFORE THE**
CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
9 **STATE OF CALIFORNIA**

10 In the Matter of the Accusation Against:
11
12 SCOTT KENDALL BARTON
11607 Ruby Canyon Lane
Houston, TX 77093
13
14 Certified Public Accountant
Certificate No. 31817,

15 Respondent.

Case No. AC-2002-4

OAH No. N 2003 030083

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

16
17 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the
18 above-entitled proceedings that the following matters are true:
19

PARTIES

- 20 1. Complainant Carol Sigmann is the Executive Officer of the California Board of
21 Accountancy. She brought this action solely in her official capacity and is represented in this matter by
22 Bill Lockyer, Attorney General of the State of California, by Jeanne C. Werner, Deputy Attorney
23 General.
24
25 2. Respondent Scott Kendall Barton is licensed by the California Board of
26 Accountancy (Board) as set forth herein and is represented in this proceeding by attorney Richard
27 Forrest, whose address is Forrest & Kelley LLP, 3555 Timmons Lane, Suite 1015, Houston, TX
28 77027.

1 3. On or about May 8, 1981, the California Board of Accountancy issued
2 Certified Public Accountant Certificate No. 31817 to the Respondent in this matter, Scott Kendall
3 Barton. The certificate was in full force and effect at all times relevant to the charges brought in
4 Accusation No. AC-2002-4 and is renewed, in a status permitting active practice, through January 31,
5 2004.

6 JURISDICTION

7 4. Accusation No. AC-2002-4 was filed before the Board and is currently
8 pending against Respondent. The Accusation and all other statutorily required documents were
9 properly served on Respondent on January 4, 2002. Respondent timely filed his Notice of Defense
10 contesting the Accusation. A copy of Accusation No. AC-2002-4 is attached as exhibit A and
11 incorporated herein by reference.

12 ADVISEMENT AND WAIVERS

13 5. Respondent has carefully read, fully discussed with counsel, and understands
14 the charges and allegations in Accusation No. AC-2002-4. Respondent has also carefully read, fully
15 discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary
16 Order.

17 6. Respondent is fully aware of his legal rights in this matter, including the right to
18 hearing on the charges and allegations in the Accusation; the right to be represented by counsel at his
19 own expense; the right to confront and cross-examine the witnesses against him; the right to present
20 evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the
21 attendance of witnesses and the production of documents; the right to reconsideration and court review
22 of an adverse decision; and all other rights accorded by the California Administrative Procedure Act
23 and other applicable laws.

24 7. Respondent voluntarily, knowingly, and intelligently waives and gives up each
25 and every right set forth above.

26 CULPABILITY

27 8. Respondent admits that his right to practice before the United States Securities
28 and Exchange Commission has been suspended or revoked in that, on or about July 2, 2001, in an

1 administrative proceeding before the United States Securities and Exchange Commission ("SEC"),
2 entitled *In the Matter of Scott K. Barton, CPA* (SEC Administrative Proceeding No. 3-10528),
3 Respondent was denied the privilege of appearing or practicing before the SEC as an accountant for h
4 conduct as the controller of Paracelsus Healthcare Corporation while he was licensed by the Board as
5 a Certified Public Accountant.¹

6 9. Respondent agrees that his Certified Public Accountant Certificate is subject to
7 discipline under Business and Professions Code Section 5100(h)(formerly Section 5100(g)), and he
8 agrees to be bound by the Board's imposition of discipline as set forth in the Disciplinary Order below

9 CONTINGENCY

10 10. This stipulation shall be subject to approval by the California Board of
11 Accountancy. Respondent understands and agrees that counsel for Complainant and the staff of the
12 California Board of Accountancy may communicate directly with the Board regarding this stipulation
13 and settlement, without notice to or participation by Respondent or his counsel. By signing the
14 stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to
15 rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt
16 this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of
17 no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the
18 parties, and the Board shall not be disqualified from further action by having considered this matter.

19 11. The parties understand and agree that facsimile copies of this Stipulated
20 Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same force and
21 effect as the originals.

22 12. In consideration of Respondent's stipulation to license revocation, the Board
23 will not seek reimbursement of related and accrued investigation and prosecution costs in this matter
24 this time. However, should respondent seek reinstatement of his certificate in the future, he agrees that
25 prior the Board's consideration of his petition for reinstatement, he will reimburse the Board
26 \$6,500.00 as reimbursement for costs incurred in this action.

27
28 1. The SEC's order provides that Respondent Barton may apply to resume such practice after
three years.

13. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Certified Public Accountant Certificate No. 31817 issued to Respondent Scott Kendall Barton is revoked.

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Richard Forrest. I understand the stipulation and that I will no longer be licensed to practice under my California Certified Public Accountant Certificate. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the California Board of Accountancy.


3/27/03
DATED: _____



SCOTT KENDALL BARTON
Respondent

I have read and fully discussed with Respondent Scott Kendall Barton the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 3/27/03 _____



RICHARD FORREST
Attorney for Respondent

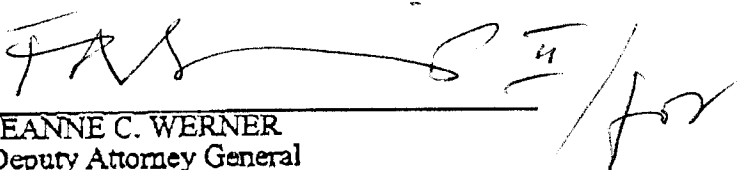
ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully

1 submitted for consideration by the California Board of Accountancy of the Department of Consumer
2 Affairs.

3
4 DATED: 7/2/03

5 BILL LOCKYER, Attorney General
6 of the State of California

7 
8 JEANNE C. WERNER
9 Deputy Attorney General

10 Attorneys for Complainant

11 DOJ Docket Number: 03541110-SF2001AD1138
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**BEFORE THE
CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

SCOTT KENDALL BARTON
11607 Ruby Canyon Lane
Houston, TX 77093

Certified Public Accountant
Certificate No. 31817

Respondent

Case No. AC-2002-4

OAH No. N 2003 030083

DECISION AND ORDER

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the CALIFORNIA BOARD OF ACCOUNTANCY as its Decision in the above-entitled matter.

This Decision shall become effective on June 21, 2003.

IT IS SO ORDERED May 21, 2003.

CALIFORNIA BOARD OF ACCOUNTANCY

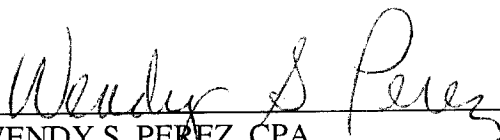

By WENDY S. PEREZ, CPA
PRESIDENT, CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS

Exhibit A
Accusation No. AC-2002-4

1 BILL LOCKYER, Attorney General
of the State of California
2 JEANNE C. WERNER, State Bar No. 93170
Deputy Attorney General
3 California Department of Justice
1515 Clay Street, 21st Floor
4 P.O. Box 70550
Oakland, CA 94612-0550
5 Telephone: (510) 622-2226
Facsimile: (510) 622-2121

6 Attorneys for Complainant

7
8 **BEFORE THE**
CALIFORNIA BOARD OF ACCOUNTANCY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. AC-2002-4

12 SCOTT KENDALL BARTON
11607 Ruby Canyon Lane
13 Houston, TX 77093

ACCUSATION

14 CPA Certificate No. 31817,

15 Respondent.

16
17 Complainant Carol Sigmann alleges:

18 **PARTIES AND JURISDICTION**

19 1. Carol Sigmann ("Complainant") brings this Accusation solely in her
20 official capacity as the Executive Officer of the California Board of Accountancy, Department of
21 Consumer Affairs ("Board").

22 2. On or about May 8, 1981, the Board issued Certified Public Accountant
23 Certificate Number No. 31817 to Scott Kendall Barton ("Respondent"). The Certified Public
24 Accountant Certificate was in full force and effect at all times relevant to the charges brought
25 herein and will expire on January 31, 2002, unless renewed.

26 3. This Accusation is brought before the Board under the authority of Section
27 5100 of the Business and Professions Code (hereinafter "Code"), which provides that the Board
28 may discipline a license for unprofessional conduct which includes, but is not limited to, one or

any combination of the following causes:

(f) Willful violation of this chapter (the Accountancy Act) or any rule or regulation promulgated by the board under the authority granted under this chapter.

(g) Suspension or revocation of the right to practice before any governmental body or agency.

(h) Fiscal dishonesty or breach of fiduciary responsibility of any kind.

(i) Knowing preparation, publication or dissemination of false, fraudulent, or materially misleading financial statements, reports, or information.

4. Code Section 5063(a) provides that a Board licensee shall report to the board in writing of the occurrence of certain events occurring on or after January 1, 1997, within 30 days of the date the licensee has knowledge of these events, which include the cancellation, revocation, or suspension of the right to practice as a certified public accountant or a public accountant before any governmental body or agency.

5. Code Section 5107 provides for recovery by the Board of all reasonable costs of investigation and prosecution of the case, including, but not limited to, attorney's fees in specified disciplinary actions, including alleged violations of Code Section 5100(h) and (i). A certified copy of the actual costs, or a good faith estimate of costs signed by the executive officer, constitute prima facie evidence of reasonable costs of investigation and prosecution of the case.

6. Code Section 118(b) provides in pertinent part that the suspension, expiration, or forfeiture by operation of law of a license issued by the Board shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the Board of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any such ground. Code Section 5070.6 provides that, except as otherwise provided in this chapter, an expired permit may be renewed at any time within five years after its expiration upon the filing of an application for renewal on a form prescribed by the board, payment of all accrued and unpaid renewal fees and providing evidence satisfactory to the board of compliance as required by Code Section 5070.5.

1 **FIRST CAUSE FOR DISCIPLINE - SEC Discipline**

2 7. Respondent is subject to disciplinary action under Code Section 5100(g) in
3 that his right to practice before a governmental body or agency has been suspended or revoked.
4 The circumstances are that, on or about July 2, 2001, in an administrative proceeding before the
5 United States Securities and Exchange Commission ("SEC"), entitled *In the Matter of Scott K.*
6 *Barton, CPA* (SEC Administrative Proceeding No. 3-10528), Respondent was denied the
7 privilege of appearing or practicing before the SEC as an accountant. The order provides that
8 Barton may apply to resume such practice after three years. The circumstances underlying the
9 SEC's administrative action are as follows:

10 A. Respondent Barton was the controller of Paracelsus Healthcare Corporation
11 ("Paracelsus") from 1981 through August 1996 (before its merger with Champion Healthcare
12 Corporation). Paracelsus was incorporated in 1980 in California and formerly maintained its
13 principal offices in Los Angeles, California. At all times relevant to the SEC's charges, Barton
14 was licensed as a CPA in California.

15 B. Paracelsus registered a debt offering and began filing periodic reports with the
16 SEC in 1993. By August 1996, it operated 52 hospitals and other medical facilities in seven
17 states. In August 1996, it raised \$365 million in concurrent offerings of common stock and debt
18 registered with the SEC, and merged with Champion, pursuant to an exchange offer registered
19 with the SEC. In August 1996, Paracelsus became a publicly held, Section 12(b) reporting
20 company. After the merger, Paracelsus moved its principal offices to Houston, Texas, and
21 registered its common stock with the SEC. The stock then began trading on the NYSE and
22 Paracelsus continued filing periodic reports with the SEC.

23 C. While Barton was Paracelsus' controller, he participated in a scheme by which
24 Paracelsus inflated its quarterly and annual earnings. Barton and others created and used "cookie
25 jar" reserves which were inappropriate under Generally Accepted Accounting Principles, because
26 no probable and reasonably estimable exposures justified their creation. Their later decrease
27 artificially boosted Paracelsus' earnings and concealed a decline in earnings. By 1993, the
28 accumulated reserves totaled at least \$16 million. This scheme enabled Paracelsus to understate

1 income in 1993, and then overstate income from 1994 through the third quarter of 1996 as
2 reserves generated during prior periods were brought into income. Paracelsus materially
3 overstated its annual and quarterly earnings in the audited financial statements and other
4 disclosures in its (SEC) Form 10-K filings for 1993, 1994 and 1995, and in the financial
5 statements and other disclosures in its Form 10-Q filings for the first, second and third quarters
6 of 1996. Barton signed the Form 10-K filings and the Form 10-Q filings.

7 D. Barton provided financial information and helped prepare the filings. Also, the
8 Forms S-1 and S-4 filed with the SEC in 1996 by Paracelsus re-published the materially
9 inaccurate audited financial statements for 1993, 1994 and 1995. Barton signed the registration
10 statements, and provided financial information and helped prepare the statements.

11 E. Further, Barton failed to disclose all material facts and/or made materially
12 false or misleading statements regarding the reserves to Paracelsus' outside auditors.

13 F. Following the 1996 merger, Paracelsus' new management commenced a
14 special inquiry, uncovering the misconduct and resulting in the restatements of Paracelsus'
15 financial statements for 1993, 1994, 1995 and the first three quarters of 1996. Its stock price
16 dropped precipitously following disclosure of the accounting irregularities.

17 **SECOND CAUSE FOR DISCIPLINE - False, Fraudulent & Misleading**
18 **Financial Statement, Reports and Information**

19 8. Respondent is subject to disciplinary action under Code Section 5100(i)
20 for the knowing preparation, publication and/or dissemination of false, fraudulent, or materially
21 misleading financial statements, reports, or information. The circumstances are those described
22 in paragraph 7 above, specifically multiple instances of Barton's preparation, publication and
23 dissemination of the required SEC filings, the false financial statements, and the false
24 representations to auditors.

25 9. Incorporating by reference the matters alleged in paragraphs 7 and 8 above,
26 cause for discipline of Barton's license is established under Code Section 5100(i).

27 **THIRD CAUSE FOR DISCIPLINE - Fiscal Dishonesty & Breach of Fiduciary Duty**

28 10. Respondent is subject to disciplinary action under Code Section 5100(h) in

1 that, as is more particularly set forth in paragraph 7 above, he engaged in multiple acts of fiscal
2 dishonesty in his creation and dissemination of false financial information, to his own benefit as
3 an officer of the company, and multiple instances of breach of fiduciary duty to the company and
4 its shareholders.

5 11. Incorporating by reference the matters alleged in paragraphs 7 and 10 above,
6 cause for discipline of Barton's license is established under Code Section 5100(h).

7 **FOURTH CAUSE FOR DISCIPLINE - Failure to Report as Required**

8 12. Respondent is subject to disciplinary action under Code Section 5100(f) in
9 conjunction with Code Section 5063(a)(3). Incorporating the matters set forth in paragraph 7
10 above, Respondent failed to report the denial of the privilege of appearing or practicing as an
11 accountant before the SEC to the Board as required, and cause for discipline is thereby
12 established.

13 **OTHER MATTERS**

14 13. Pursuant to Code Section 5107, it is requested that the administrative law
15 judge, as part of the proposed decision in this proceeding, direct Respondent to pay to the Board
16 all reasonable costs of investigation and prosecution in this case, including, but not limited to,
17 attorneys' fees.

18 14. It is charged, in aggravation of penalty, that at all times material to
19 Respondent's misconduct described above, Barton was Paracelsus' controller, an officer of the
20 corporation, and an experienced certified public accountant, and also that the misconduct
21 occurred over a period of years and thus evidences a continuing course of misconduct and
22 repeated instances of dishonesty and breach of fiduciary duty.

23 It is further charged, in aggravation of penalty, that a permanent injunction was
24 entered against Respondent in a civil action in U.S. District Court for the Southern District of
25 Texas, Houston Division, *SEC v. Ron Messenger, et al*, Case CIV.NO.H-01-2022
26 (S.D.TX,Houston Div.). The suit alleged, among other things, the misconduct described in
27 paragraph 7 above. On or about January 17, 2001, in *SEC v. Ron Messenger et al*, Scott R.
28 Barton consented to the entry of a Final Judgment of Permanent Injunction and Other Relief

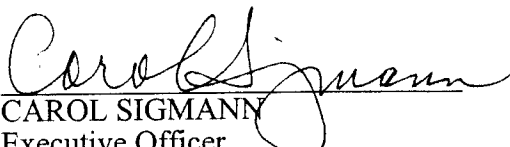
1 against him. The Judgment against Barton was filed with the court on June 20, 2001,
2 permanently restraining him from violating Section 17(a) of the Securities Act of 1933 and
3 Sections 10(b) and 13(b)(5) of the Exchange Act and Rules 10b-5, 13b-2-1 and 13b2-2
4 thereunder, and from aiding and abetting other specified violations. Barton was assessed a civil
5 penalty in the amount of \$25,000.

6 PRAYER

7 WHEREFORE, Complainant requests that a hearing be held on the matters herein
8 alleged, and that following the hearing, the California Board of Accountancy issue a decision:

- 9 1. Revoking, suspending, or otherwise imposing discipline upon CPA
10 License Number 31817, issued to Scott Kendall Barton;
11 2. Ordering Scott Kendall Barton to pay the California Board of
12 Accountancy the reasonable costs of the investigation and enforcement of this case, pursuant to
13 Business and Professions Code section 5107; and
14 3. Taking such other and further action as deemed necessary and proper.
15

16 DATED: December 27, 2001.

17 
18 CAROL SIGMANN
19 Executive Officer
20 California Board of Accountancy
21 Department of Consumer Affairs
22 State of California
23 Complainant
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